

DPS-8

October 9, 2003

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **03-2501**

UNITED STATES OF AMERICA

v.

EUGENE MCDONALD, JR.

(M.D. Pa. Crim. No. 00-cr-00007)
(criminal treated as civil)

Present: MCKEE, RENDELL AND GREENBERG,CIRCUIT JUDGES

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

MMW/SR

ORDER

The foregoing request for a certificate of appealability is denied. With regard to the appellant's Apprendi-based claims, we note that the sentence imposed is less than the maximum sentence (forty years) for crimes involving the drug type and quantities to which the appellant pled guilty (approximately one ounce of crack). 21 U.S.C. § 841(b)(B)(iii). Thus, Apprendi does not apply. We agree with the District Court's reasons for rejecting the appellant's remaining claims and conclude that he has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

By the Court,

/s/ Theodore A. McKee, Circuit Judge

Dated: November 26, 2003

DRC/cc: Mr. Eugene McDonald

William A. Behe, Esq.

Theodore B. Smith III, Esq.